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SUBJECT: CORRUPTION ALLEGATIONS DOMINATE KHMER ROUGE TRIALS
(UNAKRT) STEERING COMMITTEE MEETING IN NEW YORK AT UK
MISSION

REF: 9/24/08 EMAIL EXCHANGE MSIMONOFF USUN/L AND
JMELLOTT S/WCI

Classified By: MINISTER COUNSELLOR LEGAL ADVISER CAROLYN WILLSON
FOR REASONS 1.4(B) AND 1.4(D)

¶1. (C) Summary. On September 24, USUN attended a meeting of the steering committee of the UN Assistance to the Khmer Rouge Trials (UNAKRT). While all participants praised the progress made by the UN special expert David Tolbert and the recently appointed Deputy Director (UNAKRT Administration Office) Knut Rosandhaug over the last several months, the ongoing corruption issue dominated the meeting, and there is concern that it could threaten to infect the court proceedings. End summary.

¶2. (U) The United Kingdom hosted a meeting of the steering committee of the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) on September 24. In attendance were the members of the steering committee (Australia, France, Japan, UK); officials from the UN Secretariat (including David Tolbert, Expert Advisor; Peter Taksoe-Jensen, Assistant-Secretary General for Legal Affairs; Jun Yamazaki, Assistant Secretary-General and Controller; Marie-Oveissi of the Department of Economic and Social Affairs; Romulo Garcia, Chief, North East Asia and Mekong Division, Regional Bureau for Asia and the Pacific of UNDP; Jo Scheuer, Country Director, UNDP Cambodia; Knut Rosandhaug, Deputy Director, Office of Administration of the Extraordinary Chambers in the Courts of Cambodia.) USUN Legal Officer and a representative of the Mission of Cambodia attended as observers.

The Good News: The Tribunal Is Making Progress, Despite Several Issues to Tackle

¶3. (SBU) David Tolbert, whose appointment as Expert Advisor to address several management and corruption issues ends this week, updated the steering committee on recent events. He reported that the budget is complete and being used as a fund-raising document, and that Knut Rosandhaug, the recently appointed principal administrator on the international side of the Tribunal, is doing a tremendous job.

¶4. (SBU) Deputy Director Knut Rosandhaug presented an update. There was a closing order in the first criminal case, against Kaing Guek Eav, also known as Duch, the warden of a notorious detention center. The investigation is complete, and thus the case is ready to go to trial. However, the prosecutor appealed the closing order. The pre-trial chamber should rule on this issue by the end of November. The first case will likely go to trial by the end of January or the beginning of February. The investigation of the second case should be concluded by the middle of next year. There is internal debate as to whether there should be a third case.

¶5. (SBU) Rosandhaug noted that the Tribunal will be remembered for its novel approach to victim participation, an area, he said, where the Tribunal is weakest. There are close to two thousand complaints, and the Tribunal has not figured out how to deal with them. There needs to be a procedure established for dealing with victims' complaints. Rosandhaug also noted that there are difficulties recruiting top-notch staff on the international side of the Tribunal.

¶6. (C) Rosandhaug presented a bleak picture of the relationship among senior managers at the Tribunal. He said that there is no communication whatsoever between the Director and the Deputy Director, largely because of the corruption issue, discussed below.

The Bad News: Corruption Issue Casts a Shadow Over the Tribunal

¶7. (C) The corruption issue looms large over the Tribunal. The central allegation is that Sean Vissoth, Director of the Tribunal, forced Cambodian staff members of the Tribunal to pay him kickbacks. Tolbert reported on a three step anti-corruption plan, as follows: 1. A new ethics officer will be appointed for the international side of the Tribunal; ¶2. a judicial code of conduct has been adopted; and 3. a process is being put in place to take complaints and engage in additional review of pending complaints. Tolbert reported that the most recent development is that the Government of Cambodia has aired the corruption allegations against Vissoth in the Cambodian press. The Deputy Director has received a letter from defense counsel making a broad request for additional information related to the corruption allegations.

The international judges will be taking a close look at how the corruption issue is handled. If it is not addressed, the international judges will consider their options, including, he implied, quitting the Tribunal to avoid being associated with a corrupted process.

¶8. (C) The press is now asking Rosandhaug questions about the corruption allegations, and he finds it difficult to remain silent, for it gives the appearance that the UN has something to hide. According to Rosandhaug, to date, the corruption issue had not infected the judicial process. Now that defense counsel has requested detailed information on corruption, it is no longer possible to keep the corruption issue out of the judicial process. The likely next step will be defense counsel filing a motion with the court raising the corruption issue.

¶9. (C) According to Rosandhaug, another problem is that the President of the Cambodian Supreme Court has been appointed to be the chief ethics officer for the Cambodian side of the Tribunal.

¶10. (C) Peter Taksoe-Jensen, Assistant-Secretary General for Legal Affairs, said that it was unacceptable to have a UN-backed court where there are corruption allegations that are not addressed. For the moment, the UN has decided not to respond to communications from Cambodia attacking David Tolbert and the UN. Taksoe-Jensen said that that day there was high level contact between the 38th Floor and the Foreign Minister of Cambodia and that the Legal Counsel would meet with the Cambodian Permanent Representative. The next steps are to respond to the two letters and to send a high level delegation to Cambodia, perhaps at the beginning of November. (Taksoe-Jensen would head that high level delegation.) The goal would be to push for Vissoth's removal and the adoption and implementation of the anti-corruption package that David Tolbert has presented. Taksoe-Jensen said that there is a real risk that the cases will be contaminated by the corruption issue.

¶11. (C) All of the steering committee members expressed deep concern about the corruption issue, and recognized that it needs to be addressed as soon as possible, and through diplomacy, before it infects the entire judicial process.

USUN, as per REF, also expressed its concern about the corruption issue, and said that it will monitor this issue as it considers whether to make additional contributions next year. USUN said that it was pleased that OLA was engaging on the issue and urged UN contact with the Government of Cambodia at the highest levels. USUN also praised the progress made by David Tolbert and Knut Rosandhaug.

¶12. (C) UNDP said that it had frozen disbursements to the Cambodian side of the Tribunal pending resolution of the corruption issues. It noted that diplomatic solutions might not be the end, as there must be accountability for past misuse of funds, if any. There are internal discussions within the secretariat as to what kind of accountability is required to bring this matter to closure.

¶13. (C) Comment. The progress achieved by David Tolbert to put the Tribunal back on the right track is jeopardized by the prolongation and escalation of the corruption issue. There was an ominous sense in the steering committee meeting that if the Government of Cambodia does not act quickly to resolve this issue, the Tribunal itself might be tainted beyond repair. End comment.

Financial Report

¶14. (SBU) DESA reported on the financial situation of the Tribunal. In short, funding is in place until March, but there will be a funding shortfall without new pledges. USUN noted that the United States had announced its intention to contribute \$1.8 million to the court, but advised that there were additional internal processes that needed to be completed, including consultation with Congress. Members and others thanked the United States.

"The Way Forward" from the New York Perspective

¶15. (C) The comptroller spoke on the "way forward," which had three proposed elements: 1. The appointment of a special expert on a part-time basis, to continue playing the role that David Tolbert played. This expert, who would work a maximum of three months out of the year on an intermittent basis, would be based in New York and funded by OLA's trust fund. But Member States would need to earmark money for the trust fund. (France and Australia were supportive, Japan had reservations about this proposal due to additional costs, and the UK had reservations due to internal funding mechanisms.)

¶2. Creation of a new liaison officer with the court, to be housed in OLA. (All members had reservations, but were somewhat placated by DESA's assertion that this position could be funded from the existing budget.) 3. Monthly meetings of the steering committee, as opposed to quarterly meetings. (All members opposed, stating that the steering committee's terms of reference allow for additional meetings on an ad hoc basis as needed.) Jensen added that OLA simply does not presently have the resources to devote the necessary time and attention to the Tribunal.

Khalilzad